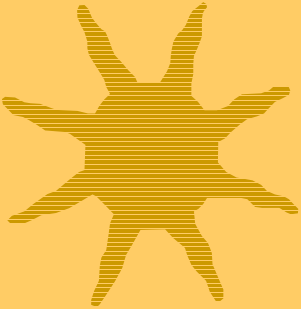


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# *GHG Legislation and Litigation*



# *GHG Legislation House*

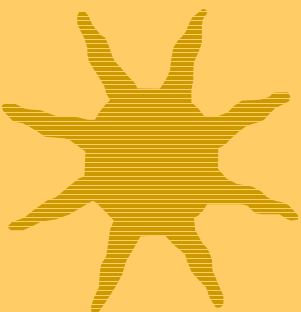
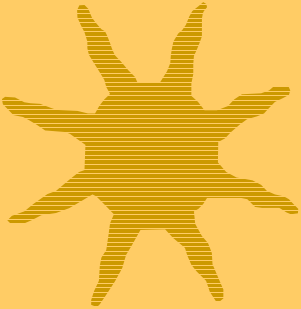
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- ★ **Waxman-Markey (passed House 219-212 in June 2009)**
- ★ GHG reduction targets of 17% below 2005 levels by 2020 and
- ★ 83% below 2005 levels by 2050
- ★ State cap-and-trade programs are preempted during 2012-2017
- ★ Performance standards for new coal-fired EGUs phased in



# *GHG Legislation Senate*

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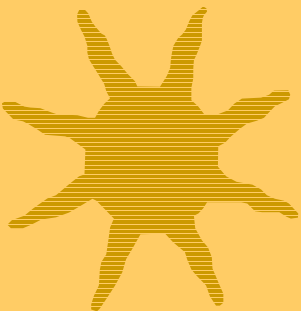


- ★ **Kerry-Boxer (passed Senate EPW 11-1 in Nov 2009)**
- ★ Similar in many respects to W-M bill
- ★ Retains EPA authority to regulate GHGs in many areas where W-M preempted it (PSD permitting, NSPS for capped sources)
- ★ State cap-and-trade programs delayed if launch of federal program is delayed



# *GHG Legislation Senate*

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- ★ **Kerry-Lieberman (introduced May 2010; no action taken)**
- ★ Similar in many respects to W-M bill
- ★ Coverage of sectors delayed somewhat (EGUs beginning in 2013; other industrial sectors beginning in 2016)
- ★ Transportation sector covered through fuel producers and importers; buy allowances at a fixed price
- ★ EPA is prohibited from setting NSPS for sources **INSIDE** the cap (same as W-M), EPA may set NSPS for EGUs not subject to the performance standards in the bill



# *GHG Legislation*

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## ★ Derail

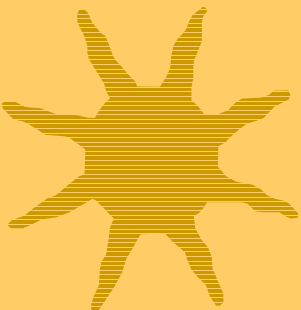
- Sen. Murkowski Resolution: Disapproval of “endangerment finding” (blocked 47-53 on procedural vote 6/10/10)

## ★ Delay

- Sen. Rockefeller bill (S. 3072): Delays EPA regulation of stationary sources for two years (no impact on vehicle GHG regs)
- May be considered during the lame-duck session

## ★ Defund

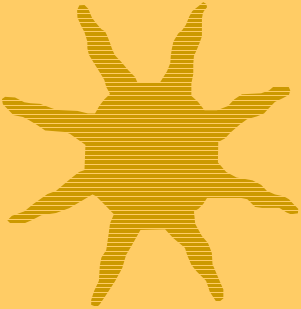
- House attempt to attach “rider” to Interior and Environment Subcommittee FY2011 spending bill for a two year delay; failed on July 22, 2010 with 7-7 deadlock
- Senate may also try use the Appropriations process to influence EPA actions





# *GHG Litigation*

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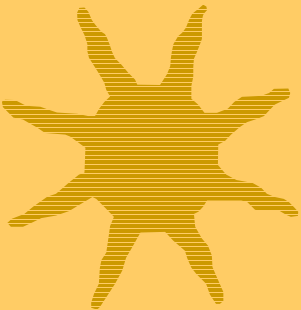
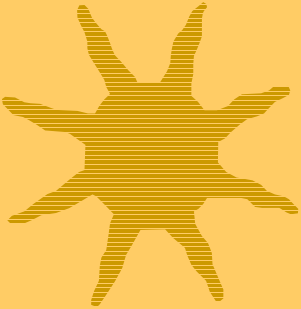


- ★ Endangerment Finding
- ★ Reconsideration of Johnson Memo
- ★ Light Duty Vehicle/CAFÉ rule
- ★ Tailoring Rule
- ★ Motion For Stay
- ★ Motion For Coordination



# *Endangerment Finding*

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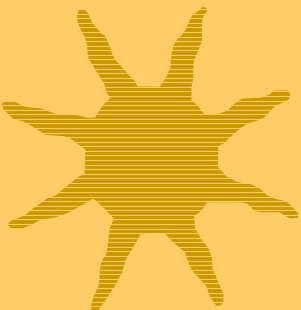
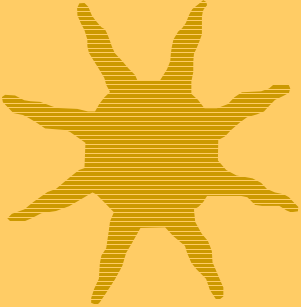


- ★ A total of seventeen (17) petitions were filed in Court seeking review of the Endangerment Rule. In addition, ten (10) petitions seeking the Rule's reconsideration were filed before EPA.
- ★ On June 16, 2010, the Court placed the Endangerment Rule review proceedings in abeyance pending the outcome of the EPA's agency reconsideration proceedings.
- ★ On August 13, 2010, EPA published its decision denying reconsideration of its Endangerment Rule.
- ★ On August 16, 2010, the Court extended the abeyance until at least September 15, 2010, when motions to govern proceedings are due.
- ★ EPA's denial of reconsideration has subsequently been challenged by SLF, the U.S. Chamber, and other parties.



## *Reconsideration of Johnson Memo*

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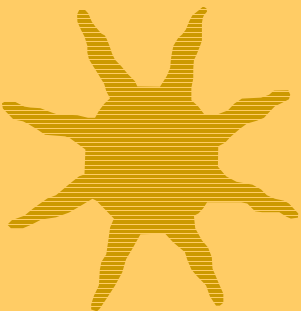
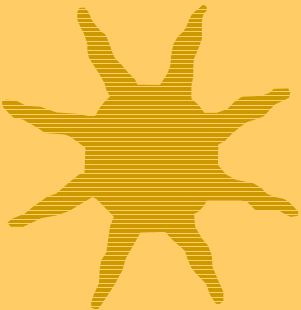
- ★ A total of eighteen (18) petitions have been filed in Court seeking review of EPA's PSD Triggering Rule. Fifteen of those eighteen petitions have been consolidated together
- ★ EPA has moved to consolidate the remaining three petitions and to extend procedural deadlines to August 30, 2010 for docketing statements and statements of issues, September 15 for initial submissions and procedural motions, and September 30 for dispositive motions and the certified index to the administrative record.





## *Light Duty Vehicle/CAFÉ rule*

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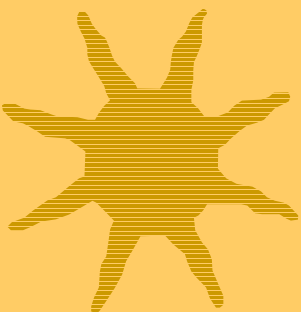
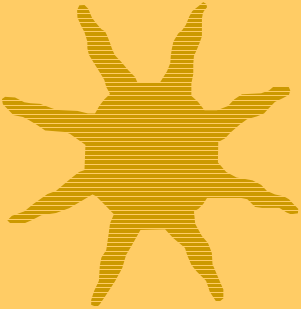


- ★ Seventeen (17) petitions for review have been filed in Court seeking direct review of the Tailpipe Rule (all of which have been consolidated under lead case No. 10-1092) or review of their constructive re-opening of past EPA rulemakings.
- ★ Initial submissions were filed on August 20, 2010, procedural motions are due on September 15, 2010, and dispositive motions and the certified index are due September 30, 2010.
- ★ Georgia filed a motion to intervene in August



## *Tailoring Rule*

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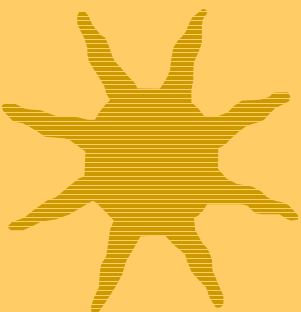
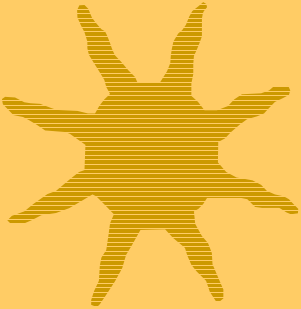


- ★ A total of twenty-six (26) petitions have been filed in Court seeking review of EPA's Tailoring Rule. Six of those petitions have been consolidated together under Case No. 10-1131, and the remaining twenty have been consolidated together under Case No. 10-1200.
- ★ EPA has moved to consolidate all twenty-six petitions, and to adjust procedural deadlines in these cases to August 30, 2010 for docketing statements and statements of issues, September 15, 2010 for initial submissions and procedural motions, and September 30, 2010 for dispositive motions and the certified index to the administrative record.



# *Motion For Stay*

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- ★ Filed: 09/15/2010
- ★ Coalition For Responsible Regulation, Inc., Et Al., Southeastern Legal Foundation, Et Al., Competitive Enterprise Institute, Et Al., Landmark Legal Foundation, Et Al., and Ohio Coal Association
- ★ Identical Motion filed in each of the four consolidated dockets.
- ★ Argument is that the rules' ultimate restrictions take effect no later than January 2, 2011 and the approach of that date is already disrupting capital investment, with direct consequences for jobs, energy security, and economic recovery.



# *Motion For Coordination Of Related Cases*

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- ★ Filed 08/26/2010
- ★ Southeastern Legal Foundation, Inc. *et al.* (“SLF”), the Chamber of Commerce of the United States (“U.S. Chamber”), Competitive Enterprise Institute, FreedomWorks, and SEPP (collectively “CEI”), and the Portland Cement Association (“PCA”)
- ★ Request that the cases be designated “complex,” be assigned to a single three-judge panel, and be briefed, argued, and decided in coordinated fashion.